

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 436 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

H.A. SHAH

Versus

KHODIYAR KARIANA PROVISIONS STORES

Appearance:

MR KI SHAH for Petitioner

MR RR MARSHALL for Respondent No. 1

K.C. Shah,Ld.PUBLIC PROSECUTOR for Respondent No. 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 04/08/97

ORAL JUDGEMENT

The present Criminal Appeal requires to be dismissed in view of the discrepancy in the evidence of the complainant regarding sending of the sample to the Public Analyst. The Respondent accused when tried for the offence punishable under section 7 of the Prevention

of Food Adulteration Act of 1954, came to be acquitted by the Ld. JMFC (Municipality), Surat, under the orders dated September 27, 1988 in PFA Case No. 17 of 1986. The said orders of acquittal are in challenge in the present Criminal Appeal.

The Court below has noticed with pertinence that the evidence of the complainant Inspector was not only not consistent in respect of the date of sending of the samples, but was found to be contradictory. It appears that the Ld. trial Magistrate was perfectly justified in coming to this conclusion. This becomes evident when the evidence of Hareshchandra Shah, the Food Inspector at Exhibit-9 is referred. He says that, he had received certain instructions on February 19, 1986 from local Health Authority and therefore he had gone to the provisions store, where the accused no.3 Kalyanbhai Karsanbhai was found to be present. According to the complainant Food Inspector, he had collected two samples, one of the groundnut oil and the other one of tuwardal. According to him, the samples could be collected at about 8 p.m. He says that, later on he had gone to the Municipal office where the local Health Authority was present. He had submitted the necessary Report to local Health Authority Mr. Bhatia and had obtained his signature. His say further is that, thereafter he had returned to his office on the next day, that is on February 20, 1986 at about 11.00 a.m. and the samples could be sent to the office of the Public Analyst by the peon Gamanbhai Patel. Therefore his unequivocal say during the examination in chief and the cross examination is that, the two samples came to be sent by him to the Public Analyst on the other day, namely February 20, 1986. Any how when two Reports, one at Exhibit-17 and the other one at Exhibit-21 are seen, it is clear that the evidence on record runs counter to the say of the Food Inspector. It is clear that, Local Health Authority had received both the samples on 19th February 1986, but the Public Analyst had received the samples on the very same day, that is on 19th February 1986 and not on the next day, that is on 20th February 1986. It is not clear as to how, when the Food Inspector reaches his own office only after 8 p.m. and when he says categorically that the samples could be forwarded to the Public Analyst on the next day, that is on 20th February 1986 through the peon Gamanbhai Patel, the samples could have been received by the Public Analyst on 19th February 1986. Ld. trial Judge was perfectly justified in coming to the conclusion that the evidence appears to be unreliable. I do not find any reason to interfere in the orders of acquittal pronounced by the Court below. In my opinion

the Appeal requires to be dismissed. I order accordingly. The orders of acquittal pronounced by the Court below are hereby upheld and confirmed.

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